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RIGHTS OF THE CHILD

Written statement*/ submitted by Human Rights Advocates, Inc.,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

A call upon States to work towards abolishing the juvenile death penalty

1. Human Rights Advocates (HRA) supports the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions to abolish the juvenile death penalty. HRA submits the following information on juvenile offender executions.

2. Since 1990, executions of child offenders have taken place in 7countries: Democratic Republic of the Congo, Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, United States of America and Yemen.[1] It is reported that in 2000, the United States, Congo and Iran, were the only countries to conduct such executions and are the only countries that have not taken steps to abolish the practice. However, as of 2000, there were 14 countries, who were parties to the Convention on the Rights of the Child (CRC), that had not amended their laws to comply with the prohibition of the juvenile death penalty.[2]

3. In 1999, the Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution condemning the execution of juvenile offenders.[3] Also, in August 2000 the Sub-Commission passed a resolution affirming that it is customary international law not to execute juvenile offenders.[4] In September 2000, at the 25th session of the Committee on the Rights of the Child, the Working Group on Violence Against Children in the Context of Law and Order made a recommendation urging states to review relevant domestic legislation to ensure the urgent repeal of legislation that legalizes the imposition of sentences for child offenders that were contrary to the provisions of the CRC.[5]

4. The CRC, which prohibits the execution of those who have committed crimes when they were under the age of 18, has been ratified by 191 states.[6] This virtual universal ratification manifests an international consensus against executing juvenile offenders. In addition, over 100 countries that maintain legislation allowing the death penalty nonetheless exclude the punishment for juvenile offenders.[7]

United States of America

5. The United States is an egregious violator of the prohibition against the juvenile death penalty. Since the death penalty was reinstated in 1976 the United States has executed 17 juvenile offenders.[8] Not only does international law render juvenile offenders ineligible for the death penalty, but also the circumstances of these convictions raise questions concerning their validity. In 2000, 4 juvenile offenders were executed: Douglas Thomas, Steven Roach, Glen McGinnis and Gary Graham. Their cases manifest convictions and death sentences obtained through racism, ineffective lawyering, unheard innocence claims, and failures to pay heed to arguments based on international treaties and clemency pleas from the

U.N. High Commissioner for Human Rights, the Vatican, the European Union and the American Bar Association.[9]

6. There are currently over 80 juvenile offenders on death row.[10] Over 60% of these individuals are minorities.[11] Also, 8 of the 14 juvenile offenders that have been executed since 1990 were minorities.[12]

7. The Federal government, along with 15 states, does not execute juvenile offenders. However, 23 states permit such executions. Five have chosen 17 as the minimum age for death penalty eligibility. Eighteen maintain a minimum age of 16.[13] Nonetheless, in 1999 Montana elevated the minimum age for death penalty eligibility to 18.[14] In January of 2001 the Arkansas Senate Judiciary Committee endorsed a bill prohibiting death sentences for juveniles.[15] Also, since 1976 only seven states have executed juvenile offenders.[16] In the past two years, only Texas, Oklahoma and Virginia have conducted such executions.

8. The United States ratified the ICCPR in 1992 but entered a reservation based on its disapproval of the prohibition against executing juvenile offenders under Article 6(5). In response, the Human Rights Committee issued a comment on April 7, 1995 stating that it believed the US reservation is "incompatible with the object and purpose of the covenant" and recommended its withdrawal.[17] The United States, along only with Somalia, has not ratified the CRC.

9. In 1999, Michael Domingues, a 16 year old offender, argued that the ICCPR prohibited his execution. However, the Nevada Supreme Court maintained that the United States' reservation to the ICCPR was valid. Thus, the ICCPR did not invalidate Domingues' death sentence. Although this argument contradicts international consensus, the United States Supreme Court refused to review the case after the United States' government urged it not to.[18]

10. The federal government has failed to educate its states concerning their obligations under the ICCPR. The United Nations Special Rapporteur noted in his 1998 report of the United States, "a serious gap exists between federal and state governments, concerning implementation of international obligations undertaken by the United States government." The Federal government is responsible for demanding the states to comply with their international obligations.[19]

Other Violators

11. Democratic Republic of Congo has ratified the CRC. The nation's Minister of Human Rights declared in December 1999 that the government was exercising a moratorium on executions. However, on January 15, 2000 Kasong, a14 year old child soldier, was executed within 30 minutes of his trial.[20]

12. Iran ratified the CRC in 1994. However, in 1999 Iran executed 17 year old Ebrahim Qorbanzadeh. Most recently, according to the *Jumhouri-e Eslami* newspaper, Jasem Abrahimi, aged 17, was publicly hanged on 14 January 2000.[21]

13. Nigeria ratified the CRC in April of 1991. However, in 1997 Owerri Chidiebera Onuoha, a 17 year old who committed armed robbery at the age of 15, was publicly executed[22]only 2 months after he was sentenced to die.[23] As of 2000, legislation abolishing the practice applies only to the federal government. The legislation of the individual states of Nigeria, does not exclude executions of juvenile offenders.[24]

14. Pakistan ratified the CRC in 1990. The last known juvenile to be executed was Shamun Masih, who was hanged in 1997 for crimes he committed at age 14.[25] However, it is reported that Pakistan's Juvenile Justice System Ordinance 2000, which abolishes the death penalty for people under 18 at the time of the offence, entered into force on 1 July 2000.[26] This reform replaced laws allowing death sentences for children as young as 14.[27] However, it makes no reference to the estimated 50 juvenile offenders currently under death sentences.[28]

15. Saudi Arabia ratified the CRC in 1996. In 1992, juvenile offender, Sadeq Mal-Allah, was executed for blasphemy. In its report to the UN Committee on the Rights of the Child on the measures taken to effectuate the rights recognized in the Convention, the Saudi Arabian government stated, "capital punishment cannot be imposed on children who have not attained the age of majority in accordance with Islamic law."[29] However, this does not clarify whether Saudi Arabia's law is consistent with the CRC's prohibition of the use of the death penalty against those who committed crimes when they were under the age of 18, since Saudi Arabia's age of majority may be younger than 18.[30]

16. In 1994 Yemen elevated the minimum age for death penalty eligibility to 18.

Recommendations

17. HRA recommends that the Commission encourage the United States, Democratic Republic of the Congo and the Islamic Republic of Iran to comply with international norms relating to the abolition of the juvenile death penalty. These countries should submit annual reports to the Commission outlining their efforts towards prevention of juvenile offender executions and cooperate with the Special Rapporteur.

18. HRA recommends that the Commission request those countries, that have executed juvenile offenders in the past ten years and have not amended their laws to comply with the CRC, to submit specific information on the following:

Efforts to educate their states and citizens about CRC requirements;

Efforts of those states with separate federal and state governments, such as the United States and Nigeria, to encourage individual states to enact legislation to prevent the execution of juvenile offenders. The United States government should take a more active role in opposing the juvenile death penalty in the states. But, the Commission should commend the United States for those states that have recently taken steps to enact legislation prohibiting the practice.

Efforts and progress towards elevating the statutory minimum age for death penalty eligibility to 18 and in commuting or overturning current juvenile death sentences;

19. HRA recommends that the Commission urge the United States to ratify the CRC without reservations.

20. HRA commends Pakistan on the introduction of the Juvenile Justice System Ordinance 2000 and encourages it to report on whether it became effective and clarify its effect on those juvenile offenders currently under death sentences.

21. HRA recommends that the Commission request that all States prohibit the execution of juvenile offenders. Those States that have not executed child offenders in the past few years should be encouraged to enact national legislation demonstrating their abolition of the practice. In addition, the Commission should encourage Saudi Arabia to clarify whether or not its laws provide that the minimum age for death penalty eligibility is 18.

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[1] Amnesty International, Children and the Death Penalty: Executions Worldwide Since 1990, ACT 50/010/2000.

[2] Secretary General Report: Crime Prevention and Criminal Justice, E/2000/3 (31 March 2000), p 21. (According to Footnote 36, these fourteen countries are: Afghanistan, Burundi, Bangladesh, the Democratic Republic of the Congo, India, Iran, Iraq, Malaysia, Morocco, Myanmar, Nigeria (excepting federal law), Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates).

[3] E/CN.4/Sub.2/1999/4

[4] Resolution 2000/17, 2000E/Cn.4/Sub.2/Res/2000/7 (2000)
United Nations Press Release. 22 September 2000.

[5] United Nations Press Release. 22 September 2000.

[6] Status of the Convention on the Principal International Human rights Treaties as of 16 November 2000.

http://www.unhchr.ch (visited on 1/17/01).

[7] Amnesty International, Children and the Death Penalty: Executions Worldwide Since 1990. ACT 50/010/2000.

[8] Executions of Juvenile Offenders,
http://www.deathpenaltyinfo.org/juvexec.html (Visited 1/17/01).

[9] Human Rights Advocates, A call upon states to work toward abolishing the juvenile death penalty, Statement to the United Nations' Commission on Human Rights, E/CN.4/2000/NGO/110 (17 Feb. 2000).

[10] Death Penalty Information Center, Juveniles and the Death Penalty,
http://www.deathpenaltyinfo.org/juvchar.html. (Visited 1/20/01)

[11] Death Penalty Information Center, Juveniles and the Death Penalty,
http://www.deathpenaltyinfo.org/juvchar.html. (Visited 1/20/01)

12Execution of juvenile Offenders,
http://www.deathpenaltyinfo.org/juvexec.html(Visited 1/17/01).

[13] Streib, Victor, The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1973 –June 2000, June 2000.

[14] Minimum Death Penalty Ages by American Jurisdictions
http://www.deathpenaltyinfo.org/juvagelim.html. (Visited 1/17/01).

[15] Arkansas Democrat-Gazette, 11 Jan 2001.

[16] Executions of Juvenile Offenders,
http://www.deathpenaltyinfo.org/juvexec.html (Visited 1/17/01).

[17] CCPR/C/79/Add.50, 7 April 1995, paragraphs 14, 27.

[18] Domingues v. Nevada, 114 Nev. 783, 961 P.2d 1279, cert. denied, 120 S. Ct. 396 (1999).

[19] Amnesty International, Breaking the Consensus, Breaking the Law.

[20] Amnesty International, Children and the Death Penalty: Executions Worldwide Since 1990, ACT 50/010/2000.

[21] Id.

[22] Amnesty International, The Death Penalty Worldwide: Developments in 1997. ACT 50/04/98.

[23] AI, Death Penalty News, September 1997.

[24] Secretary General Report: Crime Prevention and Criminal Justice, 21 March 2000, Footnote 36.

[25] Amnesty International, Children and the Death Penalty: Executions Worldwide Since 1990. ACT 50/010/2000.

[26] South China Morning Post 18: China Morning Post Publishers. 7/2/00.

[27] Id.

[28] Id.

[29] UN document No. CRC/C/61

[30] Amnesty International. Children and the Death Penalty: Executions Worldwide Since 1990. ACT 50/010/2000.